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Hitler and Picasso - Searching for 'the Degenerate'

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HITLER AND PICASSO—SEARCHING FOR "THE DEGENERATE"

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In 1939, Friedrich and Louise Gutmann consigned three French impressionist works of art for sale by a Paris gallery. Among them was a Degas pastel monotype.[1] These three works were afterwards apparently seized by the Nazis and later turned up in the possession of a German art dealer doing business in Switzerland. The Gutmann's were killed in a Nazi concentration camp in 1943. The Degas was purchased in 1951 by a New York collector. In 1987, Daniel Searle, the heir to a pharmaceutical fortune, purchased the Degas that had belonged to the Gutmanns for $U.S. 875,000 from a New York art dealer. Mr. Searle made this purchase on the advice of the Art Institute of Chicago, as the prospective recipient of the work by way of gift from Searle. The descendents of the Gutmanns (Simon and Nick Goodman and Lili Gutmann) became aware that the Degas was in the possession of Mr. Searle and claimed its possession. The case did not go to court as a settlement was reached whereby Searle agreed to donate the Degas to the Art Institute of Chicago and receive a tax deduction equal to half the appraised value of the work. The Art Institute of Chicago also agreed to pay the other half of the pastel's appraised value to the Goodmans.[2]

In recent years several cases have arisen resembling the Gutmann case. A typical scenario involves valuable works of art owned privately in Europe prior to the Second World War. These artworks were either stolen from their owners or became lost in the confusion and desperation of the war period. After the war and often after the original owners have died, the art is discovered in the possession of a museum or a private collector, who usually claims to have no knowledge of the identity of the original owner or the circumstances whereby that person lost possession. At common law there is no question that an original owner retains good

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1 See J.H. Dobrzynski, "Settlement in Dispute over a Painting Looted by Nazi" *The New York Times* (14 August 1998) A17.

2 This became complicated when an appraisal was provided at less than the sum Searle had paid for the Degas; see D. D'Arcy, " 'Lowballing' Chicago's Disputed Degas" (1998-99) 21 *Art and Auction* 10.

title to personal property—such as works of art—that has been stolen or wrongfully taken.[3] When such cases have come before courts in the United States, the main issue has been whether the plaintiff's (usually a descendent of the original owner) claim is statute-barred. If the time period under an applicable statute of limitations is held to run from the time of the wrongful taking of the art work, then the owner's claim is probably time-barred and the defendant, though lacking good title, can still retain possession. While statutes of limitation have been the most significant issue in a number of American cases, other legal issues have arisen as well. In many cases like that of the Goodmans, a preliminary question sometimes arises as to which country's laws govern the claim to retain possession made by the defendant. Since these cases involve events occurring over half a century ago, there may be considerable factual uncertainty as to how the original owner lost possession of the art work and the history of its whereabouts down to the present. Other questions that might arise concern the remedy, if any, an innocent purchaser of previously stolen art might have against the dealer who sold him or her the object and the obligations of victims of art theft to report their losses or take steps to locate missing objects.

While theft of art has a long history and continues to be a modern problem, the loss and destruction of cultural property during the Second World War seemingly eclipsed earlier experiences by virtue of its sheer scope and venality.[4] This process began in 1933 when Hitler became Chancellor of Germany and re-organized that country's civil service. Hitler immediately began to attempt to use the apparatus of the German state to redefine art and culture to reflect the perverse anti-modernist priorities of the Third Reich. These efforts took many cruel and peculiar forms. Museum directors were replaced and cultural institutions closed. Private art galleries were shut down if their exhibitions displeased the Nazi party and many artists were harassed or forbidden to work. One event, however, came to symbolize this nadir in the history of art in Germany. In July 1937 the "Exhibition of Degenerate Art" opened in Munich.[5] Coinciding with displays of officially sanctioned art, the Munich exhibition was a hastily contrived show of works by Beckmann, Nolde, Marc, Chagall, Kirchner, Kandinsky, Mondrian, Picasso, and other

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[3] This is often expressed by the rule; *nemo dat qui non habet.*

[4] For surveys of these events see L.H. Nicholas, *The Rape of Europa* (New York: Knopf, 1994); see also E. Simpson, ed., *The Spoils of War; World War II and Its Aftermath; The Loss, Reappearance and Recovery of Cultural Property* (New York: H.N. Abrams in association with the Bard Graduate Center for Studies in the Decorative Arts, 1995).

[5] See S. Barron, *"Degenerate Art": The Fate of the Avant-Garde in Nazi Germany* (Los Angeles: Los Angeles County Museum of Art, 1991).

modernists. The display was intended to illustrate Nazi theories that the work of many of these artists exemplified all sorts of degeneracy thought to pose a serious threat to the welfare of the German people. Anti-Semitism was a central theme of the exhibit, which also included quotes from some of Hitler's rambling speeches. One of these quotes read:

> All the artistic and cultural blather of Cubists, Futurists, Dadaists, and the like is neither sound in racial terms nor tolerable in national terms. It...freely admits that the dissolution of all existing ideas, all nations and all races, their mixing and adulteration, is the loftiest goal of their intellectual creators and clique of leaders.[6]

Despite the supposed worthlessness of the objects on display, the exhibition was a popular success and attracted over two million visitors. A "Commission for the Disposal of Products of Degenerate Art" was established to decide which works would be of most value in the international art market. One hundred twenty-six paintings and sculptures from the 1937 exhibition were subsequently auctioned in Lucerne on 30 June 1939 and many of the works sold made their way to American museums.[7] Far more modern art works (some 4,829) were deliberately destroyed by fire before the auction. The Swiss auction was controversial outside Germany because it was well-known that its proceeds would be used to support the Nazi party. The actual results were unexceptional—twenty-eight lots failed to sell and the total proceeds from the sale amounted to only about 400,000 Swiss francs.

Following the 1937 Munich exhibition, the Nazis began to seize art from Jewish collectors all over Germany. This policy of confiscation continued in Austria, after its annexation by Germany in 1938. Hitler appointed Alfred Rosenberg, the Nazi philosopher, as head of the Einsatzstab Reichseiter Rosenberg (ERR). The ERR was instructed to seize and ship back to Germany valuable artworks upon German invasion of European countries. Lists were compiled of countries' most valuable art and other cultural properties. Armed with these lists Germany was able to seek out specific properties. In Poland the royal castle and national museum in Cracow were looted and the private collections of many Polish Jews were confiscated. Hundreds of museums were also destroyed in Eastern Europe and the U.S.S.R. This outright pillage was moderated in Western and Northern Europe, seemingly based on the Nazi view that their populations were racially and culturally akin to those of

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[6] M-A Von Lüttichau, "Entartete Kunst, Munich 1937: A Reconstruction" in S. Barron, *ibid.* at 57. The quotation was from a speech by Adolph Hitler at Nüremberg on 5 September 1934.

[7] A 1938 German law provided that *bona fide* purchasers of so-called "degenerate art" seized by the Nazis from German museums acquired good title to such property.

Germany. Nevertheless, pillaging of Jewish property also occurred throughout these countries. By 1945, in Paris alone, the ERR had confiscated the contents of 38,000 homes. Confiscated collections were first offered to Hitler and then Goering, for their private collections, before being turned over to suitable German museums.

Another of Hitler's personal preoccupations was his vision of a "super museum" in his home (Austrian) town of Linz. Hitler envisaged that this museum would eclipse any other in Europe and be filled, in part, with the art looted by the Nazis from European public and private collections. Works of art were stored in the shafts of an Austrian salt mine in preparation for transfer to the Linz Museum. Fortuitously, this physical distancing of pillaged treasure from Allied air raids over Germany probably saved many treasures from eventual destruction.

From 1945 to the present there have been ongoing attempts to restore the enormous artistic losses of the war and pre-war period. These efforts seem to have gone through at least three phases. The first of these were immediate initial steps taken by the Allies during the occupation of Germany after the war. This was followed by a long period when no major inter-governmental initiatives occurred, but some owners and their descendents sought, by means of legal proceedings, to recover individual art objects. Recently there has been a renewed round of governmental and non-governmental activity aimed at the recovery of still missing works of art.

After the war, the Allies faced the incredible task of organizing the return of confiscated art works to their countries of origin and rightful owners. To assist this effort the Allies established an investigatory agency called the Monuments, Fine Arts and Archives (MFAA) section of the U.S. office of Military Government (OMGUS). The MFAA comprised British and American art experts and its role was to locate, identify and collect confiscated art as well as prevent damage to or looting of artworks by occupation forces. The precise record-keeping practices of the ERR actually assisted the MFAA in discharging its primary responsibility—to facilitate art returns. The MFAA established "Central Collecting Points" in Munich and Weisbaden (in the American Zone of occupied Germany).[8] Despite these efforts there were still instances of theft by Allied soldiers after the war had ended. While many objects were returned to the governments of formerly German occupied countries, the same objects were sometimes not returned by those states of origin to

[8] See C.H. Smyth, "The Establishment of the Munich Collecting Point" in Simpson, *supra* note 4 at 126 and B. Taper, "Investigating Art Looting for the MFAA" *ibid.* note 4 at 135.

their original private owners.[9] This problem was reinforced by the onus of establishing prior ownership resting on such former owners. Much of the material that would have normally been available to prove ownership (such as photographs and receipts) had gone missing during the war.

The punishment of those responsible for the largest assault on the artistic heritage of the West was largely symbolic. Alfred Rosenberg, the head of the ERR, was sentenced to death at Nuremberg in 1945 for crimes against humanity and war crimes, among them his responsibility "for a system of organized plunder of both public and private property throughout the invaded countries of Europe."[10] Few other individuals were prosecuted by individual countries for art theft and other crimes arising out of the war.[11]

From the late 1940s until the 1990s the recovery of art lost during the Second World War failed to capture the interest of many governments. It is probably no accident that this period coincided with the Cold War. There were, however, instances where individual cases of art recovery were pursued—mostly before American courts.

Perhaps the earliest such case involved a Marc Chagall painting left in Brussels by Mr. and Mrs. Menzel when they fled from the Nazis to the United States in 1941. The painting was then seized by the ERR. In a scenario that was to be repeated often, the Menzels later discovered the painting in the possession of Albert List, who had bought it in good faith from the Perls Gallery in New York in 1955, for $4,000. While there was no question that the Menzels owned the painting, List argued that the New York state limitation period of three years had expired and that their action was statute-barred. The Court concluded that the cause of action by the Menzels did not arise, however, until the defendant refused to return the painting upon demand. Since this had occurred inside the limitation period the Menzel's claim was successful.[12] The result in *Menzel* has been criticized for unduly favouring the original owner, in

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[9] For the case of France, see H. Feliciano, *The Lost Museum: The Nazi Conspiracy to Steal the World's Greatest Works of Art* (New York: Basic Books, 1997).

[10] "Judgment of the International Military Tribunal for the Trial of German Major War Criminals," in the Avalon Project: Judgement: Rosenberg, http://www.yale.edu/lawweb/avalon/imtproc/judrosen.htm (23 July 1999).

[11] See W.H. Honan, *Treasure Hunt: A* New York Times *Reporter Tracks the Quedlinburg Hoard* (New York: Fromm International, 1997) at 48; and Simpson, *supra* note 4 at 158.

[12] *Menzel* v. *List* 253 N.Y.S. 2d 43; 267 N.Y.S. 2d 804; (affirmed) 298 N.Y.S. 2d 979 (1969). The court stated as follows; "In replevin, as well as in conversion, the cause of action against a person who lawfully comes by a chattel arises, not upon the stealing or the taking, but upon the defendant's refusal to convey the chattel upon demand" 267 N.Y.S. 2d 804 at 809.

comparison to the *bona fide* purchaser for value. It also produced the anomaly that the limitation period for an action against a thief would start to run earlier (from the time of the theft) than it would against an honest purchaser, such as Mr. List.

The *Menzel* case represented the first of a long line of American authorities dealing with stolen art and limitation periods. While the result in *Menzel* accorded with a natural sympathy for the owners' plight and the Menzels had, in fact, discovered the whereabouts of their lost work within what, by any standard, was a reasonable time frame, it became clear in other cases that more nuanced approaches might be needed. One such case was the decision of the United States Court of Appeal for the Second Circuit in *DeWeerth* v. *Baldinger*.[13] This case involved a claim by the German owner of a Monet painting allegedly stolen during the Second World War, possibly by American soldiers while they were quartered in a castle in southern Germany. In 1981, a nephew of the owner identified the painting in a published volume of Monet's works. It was then discovered that the painting has been consigned, by a dealer in Switzerland, for sale by the famous gallery of Wildenstein & Co. Inc., in New York. The painting had been purchased by the defendant in 1957 from Wildenstein for $30,900. Edith Baldinger had kept the Monet in her New York apartment since then. DeWeerth, upon locating Baldinger, demanded the return of the painting and Baldinger refused. DeWeerth then instituted proceedings for the recovery of the work. The U.S. District Court adjudged DeWeerth the owner of the painting and ordered its return by Baldinger. On appeal, the Court qualified the rule in *Menzel* by requiring that the request to return stolen art not be "unreasonably delayed" and that the plaintiff had "a duty of reasonable diligence in attempting to locate stolen property, in addition to the undisputed duty to make a demand for return within a reasonable time after the current possessor is identified."[14] The main reason the court used to support this refinement of the so-called "Discovery Rule" in *Menzel* was that it produced a greater incentive for original owners to search for their lost property, a responsibility the Court thought was now more realistically imposed given the development of better procedures than formerly available to locate lost art works. On the facts, the Court concluded that DeWeerth had failed to meet a due diligence standard, since she had not carried out any searches since 1957 and her earlier investigation had been minimal (she had not, for instance, informed a Central Collecting Point of her loss, although she was aware that such facilities existed).

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[13] 836 F. 2d 103 (2nd Circ 1987).

[14] *Ibid.* at p. 108.

There have been a number of other American cases since *De Weerth* and, although New York has returned to an unqualified form of the demand and refusal rule,[15] most courts show a preference for the version of the Discovery Rule set forth in *DeWeerth* itself. In *Autocephalous Greek-Orthodox Church of Cyprus* v. *Goldberg Feldman Fine Arts* the United States Court of Appeal for the Seventh Circuit dealt with a claim respecting a sixth century Byzantine mosaic that had been looted from a church in Turkish-occupied northern Cyprus.[16] Upon finding out about the theft in 1979 the Republic of Cyprus (controlling the southern half of the island) began an international effort to recover the missing mosaics. The effort included contacting UNESCO, the International Council of Museums, the International Council of Monuments and Sites, and international auction houses—such as Sotheby's and Christie's. The mosaic was purchased by an American art dealer in Geneva for $1,080,000 (U.S.). When the buyer tried to interest the Getty Museum, in California, in purchasing the mosaic, the museum contacted the Cypriot Department of Antiquities, which then requested the return of the mosaic. On the facts, the Court found that Cypress had conducted as reasonable an investigation regarding the whereabouts of the property as to justify postponing accrual of its cause of action until it was actually informed of who currently possessed the mosaic.[17] The Court reinforced its conclusion in Cyprus's favor by balancing the zeal of that country's search for the mosaic, against the seemingly casual approach of the buyer, who did little more than make a few phone calls. Given the suspicious circumstances surrounding the sale, and the large sum of money involved, the Court thought it was appropriate that the buyer take advantage of several modes of verification, such as a background check on the seller, an appraisal of the mosaic by disinterested experts and a formal search by the International Foundation for Art Research (a non-profit organization that collects and makes available information about stolen art).[18] Given the large number of specialized publications (such as catalogues *raisonnés*) detailing works of fine art, it is now feasible to require would-be purchasers of valuable art works to conduct reasonable investigations, akin to those required of original owners under the rule in *DeWeerth* and

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[15] In *Solomon R. Guggenheim Foundation* v. *Lubell* 567 N.Y.S. 2d 623 (1991) the New York Court of Appeals rejected the owner's due diligence obligation and restored the version of the demand and refusal rule applied in *Menzel* v. *List*, *supra* note 12.

[16] *Autocephalous Greek Orthodox Church of Cyprus* v. *Goldberg and Feldman Fine Arts*, Inc. 917 F. 2d 278 (U.S.C.A. 7th Circ.).

[17] *C.f. O'Keefe* v. *Snyder* 416A 2d 862 (S.C.N.J. 1980) at 873.

[18] See C. Lowenthal, "The Role of IFAR and the Art Loss Register in the Repatriation of Cultural Property" (1995) Special Issue, U.B.C. Law Rev. 309.

other cases. Further, by imposing due diligence obligations on both sides of the action, courts establish a more equitable basis for making a decision in favor of one of two innocent parties.

A preliminary issue in most cases involving the recovery of stolen art is what country's laws apply to the cause of action before the court. This, in turn, depends how that cause of action is characterized by the court. In most of the American cases discussed above the cause of action has been in replevin and the courts have applied the law of the forum. In the *Church of Cyprus* case the Court referred to the "most significant contacts" test used by Indiana courts in tort cases and discounted the application of Swiss law, even though the sale and purchase of the Cypriot mosaics had occurred there. Amongst the "contacts" with Indiana referred to by the Court was the presence of the mosaic in Indiana—a circumstance that inevitably dictated that Cypress bring its action in that state.[19]

In a series of English actions for the recovery of stolen art the courts have taken a different and perhaps, at first sight, a less flexible approach than the American courts. In the well-known case of *Winkworth* v. *Christie's*, works of art were stolen in England and taken to Italy where they were sold to an innocent buyer.[20] Afterwards the purchaser sent them back to England for sale at auction. The English court, in determining which law applied to the question of who had title to the goods, applied the law of the place where they were situated at the time of their transfer (the *lex situs*) which, in this case, was Italy. This was so, even though the property had been stolen in England, was now located there and any connection with Italy had been somewhat fortuitous. The result was then, applying Italian law, that the Italian buyer had obtained good title that would be recognized in England to defeat an action by the original owner.[21] This seems to represent a completely different approach to that in *Church of Cyprus*, but it seems correct, in that even in that case, the cause of action (replevin) first involved determining who had title to

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[19] *Supra* note 16 at 287. There is little possibility of forum shopping in art recovery cases since the plaintiff will almost inevitably sue where the stolen object is now located. In the *Gotha* case, *infra* note 22, the Court said: "The Federal Republic of Germany has not been guilty of "forum shopping." It had no control whatever as to where it could bring its action; it was Cobert which chose to buy the painting in England and convert it here."

[20] *Winkworth* v. *Christie, Manson and Woods*, [1950] 1 All E.R. 1121 (Ch. D.). See also *Bumper Development* v. *Commissioner of Police of the Metropolis*, [1991] 4 All E.R. 638.

[21] For a discussion of this rule see K. Siehr, *International Art Trade and Law* (Boston: Kluwer Law and Taxation, 1991) at 74-76.

the goods and even under American law that should be based on the *lex situs* rule, as applied in *Winkworth*.

In a recent English decision, *Gotha (City)* v. *Sotheby's*,[22] Moses J. applied *Winkworth* to the issue of who had title to a valuable seventeenth century Dutch painting that had been stolen from the collection of the Ducal Family of Saxe-Coburg-Gotha in the German city of Gotha at the end of the Second World War.[23] The painting had been smuggled from Moscow in the mid 1980s and travelled, via West Berlin, to reappear, when offered by its current possessor, for sale at Sotheby's in London in 1992. The Court held that title in the painting had passed to the German state of Thuringia (and thence to the Federal Republic of Germany) by virtue of an expropriatory 1945 German law. It was not argued in the case that anyone could or had obtained good title to the painting under Soviet or English law, so the only remaining issue was whether the claim by Germany was time-barred.[24]

To the writer's knowledge no Canadian court has even decided a case involving a claim by an owner of a work of art, illegally confiscated or stolen during the Second World War, against a *bona fide* purchaser, currently in possession. Given the flood of art into North America from Europe after the War it seems likely, however, that at least some of these objects found their way into Canadian collections.[25] Were such a claim to arise it would be likely brought in detinue or conversion.[26] According to

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[22] [1998] T.N.L.R. 650 (Q.B.D.) Moses J.

[23] The work of art was a painting by Joachim Wtewael named "Holy Family With Saints John and Elizabeth and Angels." See A. Mair, "Misappropriation and Skullduggery in Germany and Russia: A Case of Wtewael's *The Holy Family*," (1998) *Art, Antiquity and Law* 418.

[24] On the limitation issue the court in *Gotha*, *supra* note 22 embarked on an extensive discussion of limitations law in England and Germany. The English *Limitations Act 1980* would not have barred the action because it provides that no persons taking stolen property from a thief (unless they are purchasers in good faith) can take advantage of the limitation period provided for in the 1980 *Act*. The court then considered the complex provisions of the *Foreign Limitation Periods Act 1984* (designed to deal with the private international law aspects of limitation laws) and concluded that German law applied. Under that law time ran from the 1987 misappropriation of the painting and, therefore, the claim had not expired under German law. On this issue, *c.f.*, *Limitation Act*, R.S.B.C., 1996, c 266, s. 13(1); *infra* note 30.

[25] The Budapest Museum of Fine Arts has apparently claimed a painting by Giorgio Vasari from the Montreal Museum of Fine Arts on the basis that it was stolen in the Second World War. The Montreal museum argues that it acquired the painting in 1963 in good faith and under Quebec law has obtained good title to the work. See "Rejected: Co-Ownership for alleged war loot." (1998) 9 (No. 82) *The Art Newspaper* 6.

[26] The tort of conversion (or trover) can only give rise to a remedy in the form of damages (which are assessed at the time of the conversion). If the return of the object itself is sought, an action in detinue may be more appropriate. For the background to the

the principle in *Winkworth*, the applicable law would then be that of the place where the transfer of possession occurred (the *lex situs*). If, for example, the *bona fide* purchaser had acquired the object from a Vancouver art dealer then the law of British Columbia would apply, including the principle of *nemo dat qui non habet*.[27] Based on that principle the only remaining issue would be whether the claim was barred under the British Columbia *Limitation Act*.[28] This would involve two separate questions. First, assuming that the British Columbia *Limitation Act* applied, has the cause of action been extinguished under that *Act*? Second, can the statute of limitations of another jurisdiction apply if the *lex causae* is the law of a place other than British Columbia? Under the British Columbia *Limitation Act,* the limitation period for an action for damages for conversion or detinue of goods is six years after the date on which the right to bring an action "arose."[29] The question then would be how the court would define this term and whether a duty of due diligence would be imposed on the original owner (as in some American cases). Anglo-Canadian law has historically treated statutes of limitation as procedural in nature and, therefore, governed by the *lex fori*—whatever the *lex causae* might be. Recently, however, the Supreme Court of Canada has characterized a provincial limitation rule as substantive, rather than procedural.[30] This could mean that if the *lex causae* were that of a place other than the forum, the limitations rule of the foreign jurisdiction

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remedies in B.C. law, see B.C., Law Reform Commission, "Report on Wrongful Interference with Goods" 127, November, 1992) (Victoria: Queen's Printer, 1992). In British Columbia the action in replevin is found in s. 57 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253 (order of possession in favor of claimant pending outcome of action). Section 55 of the same law bars proceedings for possession or property "in respect of works of art or objects of cultural or historical significance brought into British Columbia for temporary public exhibit." This provision protects travelling exhibitions from attachment proceedings and is to be found in other Canadian provinces as well. Canadian law also furnishes a statutory remedy for foreign governments only, who are party to the 1970 UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.* Under s. 37 of the *Cultural Property Export and Import Act*, R.S.C. 1985, c. C-51, such a state can request the return of cultural property that has been illegally exported to Canada. The remedy is unlikely to apply to artworks removed during the Second World War as it is not retroactive in effect and only applies to 1970 UNESCO Convention signatories, of which none are northern European countries.

27 *Supra* note 3.

28 *Limitation Act*, R.S.B.C. 1996, c. 266.

29 *Ibid.* s. 3(6)(c). For any other action not specifically provided for in the *Limitation Act* the limitation period is six years (s. 3(5)).

30 *Tolofson* v. *Jensen*, [1994] 3 S.C.R. 1022.

could apply.[31] Apart from these technical legal issues, the outcome of any case may depend on how a court responds to the singular character of such claims. This involves such factors as the moral strength of the arguments of heirs to stolen art and the unusual nature of fine art in comparison to everyday forms of personal property.

Despite the increase in cases before courts involving art lost during the Second World War, the enormity of the problem still suggests an international solution based on agreement between states. While there have been ongoing efforts to achieve such understandings, they do not seem to have had much impetus until the last decade of this century.[32] After the conclusion of investigations into Swiss banks and Nazi gold, the United States hosted a conference in December 1998 on other Holocaust-era assets—including art. The Washington Conference on Holocaust Era Assets was held at the U.S. State Department and the Holocaust Memorial Museum and included 44 national representatives and 13 Jewish and Gypsy groups. The conference ended with the declaration of "eleven principles" with respect to Nazi-Confiscated Art—intended to guide countries in identifying looted works of art and resolving ownership disputes. Though these principles lack legal force, the conference organizers clearly hope that they will lead to more initiatives—such as Russia's promise to provide access to records of museum holdings—to speed up the resolution of claims through publicizing stolen works and other concrete measures. Amongst such measures are increased scrutiny of collections, the creation of a database of wartime losses and the use of alternatives to litigation (such as arbitration) to resolve claims.[33]

Given the highly-charged political and moral nature of the repatriation of art lost in various ways before, during and after the Second World War, it is unlikely that the issues involved will be settled solely by national governments and international agencies. Apart from national courts,

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[31] Section 13(1) of the *Limitation Act*, *supra* note 24, provides as follows; "If it is determined in an action that the law of a jurisdiction other than British Columbia is applicable and the limitation law of that jurisdiction is, for the purposes of private international law, classified as procedural, the court may apply British Columbia limitation law or may apply the limitation law of the other jurisdiction if a more just result is produced."

[32] For an outline of postwar developments regarding intergovernmental co-operation on the return of art see L.V. Prott, "Principles for the Resolution of Disputes Concerning Cultural Heritage Displaced During the Second World War" in Simpson, *supra* note 4 at 225.

[33] See D. D'Arcy, "Much piety and hot air: Report on the Washington Conference on Holocaust Era Assets" (1999) 88 *The Art Newspaper* 3. For a discussion of arbitration and mediation in art claims, see Q. Bryne-Sutton, "Arbitrational and Mediation in Art-Related Disputes" (1998) 14 *Arbitration International* 447.

national and international non-governmental bodies have had and will continue to play a major role in securing the return of lost art. In 1998 the World Jewish Congress established a Commission for Art Recovery to locate missing art and locate claims. The Holocaust Art Restitution Project, founded a year earlier, researches claims by original owners. Many American museums, as well as those in other countries, have shown a readiness to return plundered art shown to be in their collections and the Association of Art Museum Directors (U.S.) has a task force currently working on establishing guidelines for searches of its members' collections and other strategies. These institutions were all represented at the Washington Conference on Holocaust Era Assets.

The American art museum directors' task force plea to their members to inventory their collections for recovery purposes suggests a similar legislative requirement mandated by U.S. federal law in the case of American Indian artifacts in federally-funded museums.[34] It is unlikely that the deadlines in that law for the carrying out of inventories would have been met if they had not been legally mandated. This suggests that voluntary guidelines are likely to be of limited success in revealing plundered art objects—even those in public collections. Litigation has proven slow, complex, and costly, and it may be that alternatives are called for, such as requiring museums to open their archives to the public and the use of alternative dispute resolution. Whatever happens, the search for some of the greatest art of the twentieth century is far from over.

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[34] See *Native American Graves Protection and Repatriation Act*, 25 U.S.C. ss. 3301-3313 (1994). There are other parallels between claims by indigenous peoples for the return of cultural property in Musuems and elsewhere and the claims of victims of Nazi pillaging in wartime Europe. No scholarship has explored these parallels in any depth.